



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 3494-02
24 December 2002

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: SG [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 23 Mar 02 w/attachments
(2) HQMC JAM4 memo dtd 18 Jun 02
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by setting aside his reduction from staff sergeant (pay grade E-6) to sergeant (pay grade E-5) effected on 21 February 2001, which was the result of competency review board proceedings. This impliedly requested further correction of his record to show that when his transfer to the Fleet Marine Corps Reserve (FMCR) was effected on 1 August 2001, he was transferred in the grade of staff sergeant, rather than sergeant.

2. The Board, consisting of Messrs. Agresti, Milner and Zsalman, reviewed Petitioner's allegations of error and injustice on 18 December 2002, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. In correspondence attached as enclosure (2), the office having cognizance over the subject matter addressed in Petitioner's application has commented to the effect that the request has merit and warrants favorable action.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show he was not reduced from staff sergeant to sergeant on 21 February 2001.
 - b. That his record be corrected further to show that when his transfer to the FMCR was effected on 1 August 2001, he was transferred in the grade of staff sergeant, rather than sergeant.
 - c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.
 - d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder

Jonathan S. Ruskin
JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1070

JAM4

18 JUN 2001

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF SERGEANT [REDACTED]
USMC (RET)

1. We are asked to provide an opinion on Petitioner's request for reinstatement to the grade of staff sergeant, pay grade E-6. Petitioner also requests the restoration of all property, privileges, and rights affected by his administrative reduction to the grade of sergeant that resulted from his competency review board (CRB) for professional incompetence.

2. Prejudicial error occurred in the processing of Petitioner's appeal of his administrative reduction. Accordingly, we recommend that the requested relief be granted. Our analysis follows.

3. Background

a. On 20 December 2000, Petitioner was the subject of a CRB for professional incompetence. The basis for the proceedings was Petitioner's failure to make satisfactory progress while assigned to the weight control program. The CRB recommended that Petitioner be reduced to the grade of sergeant, pay grade E-5.

b. On 21 February 2001, the Commanding General (CG), 1st Marine Division (MARDIV) (Rein), reduced Petitioner to the grade of sergeant for professional incompetence.

c. On 13 March 2001, Petitioner appealed his reduction to the CG, I Marine Expeditionary Force (MEF).¹

¹ Per paragraph 6001.7.a of the Marine Corps Promotion Manual, Volume 2, Enlisted Promotions, a Marine reduced by a CRB must appeal the reduction within 5 days of notification of the action taken, or the right to appeal shall be waived in the absence of good cause shown. The record does not indicate when Petitioner was notified of the action taken on 21 February 2001. We note that Petitioner's appeal includes, as an enclosure, a letter of appeal dated 28 February 2001. Moreover, none of the endorsing commands addressed the timeliness of Petitioner's appeal or the absence of good cause for extension. We therefore presume that Petitioner's appeal of his reduction was timely.

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d. On 13 March 2001, the Commanding Officer (CO), Headquarters Battalion, 1st MARDIV, endorsed Petitioner's appeal of his reduction.

e. Nearly 3 1/2 months later, on 25 June 2001, the Commander, 1st MARDIV, endorsed Petitioner's appeal.

f. On 31 July 2001, Petitioner reached his End of Active Service (EAS) and was discharged. Petitioner's appeal of his reduction was still pending.

g. On 28 August 2001, the CG, I MEF, readdressed Petitioner's appeal and forwarded it to the Commandant of the Marine Corps (CMC) (MMPR-2). The CG, I MEF, commented, "After reviewing the record of proceedings as well as Sergeant [REDACTED] military record, I recommend approval of the appeal of reduction and reinstating Sergeant [REDACTED] as a staff sergeant. While it is apparent from the record that Sergeant [REDACTED] failed to comply with the requirements of the weight control program, it is also apparent that he has served successfully in the grade of staff sergeant for over eight years. His reduction to sergeant affected just prior to his retirement will serve no valid purpose and deny him a substantial portion of the retirement earned over the preceding 20 years of service."

h. On 11 September 2001, CMC (MMPR-2), addressed Petitioner's appeal, writing, "Since Sgt [REDACTED] is no longer on active duty, his only recourse is to petition the Board of Corrections of Naval Records (BCNR) for relief concerning his case."

4. Analysis

a. No legal error occurred in the proceedings of the CRB or the action taken by the CG, 1st MARDIV, reducing Petitioner to the grade of sergeant. Petitioner does not assert legal error, and freely admits his noncompliance with the weight control program. Instead, Petitioner asks for leniency in consideration for his otherwise honorable service for over 19 years. This value judgment is not particularly susceptible to our expertise in military justice, and we therefore decline to comment.

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b. Petitioner's claim that he was subjected to disparate treatment is not supported by any evidence in the record.

c. Paragraph 6001.5.e.6 of the Marine Corps Promotion Manual, Volume 2, Enlisted Promotions, reads, "The reduction may be effected immediately once action has been completed by the reduction authority, regardless of any pending appeal." Petitioner's reduction was therefore effective on 21 February 2001. Moreover, the pendency of Petitioner's CRB appeal could not prevent his discharge at EAS.

d. Nevertheless, prejudicial error occurred in the failure to process Petitioner's appeal in a timely manner. Paragraph 6001.2.a of the Marine Corps Promotion Manual, Volume 2, Enlisted Promotions, reads, "A reduction by a CRB is an administrative action designed to increase the efficiency of the Marine Corps, to ensure the integrity of the Marine Corps grade structure, and ultimately to ensure the capability of the Marine Corps to perform its assigned missions. Since such action will have a significant impact on the career and life of the Marine concerned, all competency review cases and procedures will be approached with the thoughtful concern, dignity, and professional objectivity normally associated with the serious affairs of command. *Furthermore, these cases will be completed with the greatest dispatch consistent with prudence and professionalism, while having due regard for the concerns of the Marine and the Marine Corps.*" (emphasis added).

e. The lack of reasonable diligence in the processing of Petitioner's appeal violated the regulatory policy to complete these cases with the greatest dispatch. Following the CRB in December 2000, it took over 8 months for the chain of command to act and process Petitioner's appeal. There is no indication in the record of any military exigency that prevented reasonably diligent processing of Petitioner's appeal. This lack of diligence is especially troubling in light of Petitioner's 31 July 2001 EAS, a date well known to Petitioner's command from the inception of the CRB. Significantly, had the CG, I MEF, acted prior to Petitioner's discharge, he could have simply granted the appeal.² Instead, because Petitioner was discharged

² See paragraph 6001.7.b.2, Marine Corps Promotion Manual, Volume 2, Enlisted Promotions.

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in the interim, the CG, I MEF, could only forward the matter to
CMC (MMPR-2).

5. Conclusion. Prejudicial error occurred in the processing of
Petitioner's appeal of his reduction for professional
incompetence. Accordingly, we recommend that the Board grant
the requested relief.

[REDACTED]

Head, Military Law Branch
Judge Advocate Division